

R E M A R K S

Claims 4 and 5 have been canceled without prejudice or disclaimer. New claims 12-19 have been added. Claims 1-3, and 6-11 have been amended. Reconsideration is requested.

5 Claims 1-11 were considered in the Office Action. Claims 1-11 stand rejected. Claims 3 and 4 are rejected under 35 U.S.C. 101. Claims 1-11 are rejected under 35 U.S.C. 112, first paragraph. Claims 1 and 11 are rejected under 35 U.S.C. 102(e) as being anticipated by Cogger, et al., U.S. Patent No. 10 6,032,184 (Cogger). Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cogger in view of Applicant's background. Claims 7-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cogger. Claims 2-4, 6, and 9-10 are objected to as being dependent upon a rejected 15 base claim, but would be allowable if rewritten in independent form including all limitations of the base claim and if rewritten to overcome any applicable rejections under 35 U.S.C. 112, first and second paragraphs.

20 Applicants believe that the currently pending claims are not anticipated by or obvious over the cited references and are in compliance with 35 U.S.C. 101 and 112, and respectfully request reconsideration.

Re the claims

25 No new matter has been added in newly introduced claims 12-19. Support for claim 12 is found on page 11, lines 14-20. Support for claim 13 is found on page 12, line 5-18. Support for claim 14 is found on page 7, lines 17-20 and page 8, claims 16-17. Support for claim 15 is found on page 7, lines 20-22 and page 13, lines 10-13. Support for claim 16 is found 30 on page 7, lines 23-25 and page 8, line 1-4. Support for claim 17 is found on page 10, lines 5-18. Support for claim 18 is found on page 8, lines 1-4 and page 11, lines 14-20. Support for claim 19 is found on page 11, lines 14-20.

Legal Standard For Rejecting Claims

Under 35 U.S.C. §102(b) and §103

The standard for lack of novelty, that is, for "anticipation," under 35 U.S.C. §102 is one of strict identity. To anticipate a claim for a patent, a single prior source must contain all its essential elements. Hybritech, Inc. v. Monoclonal Antibodies, Inc., 231 USPQ 81, 90 (Fed. Cir. 1986). Invalidity for anticipation requires that all of the elements and limitations of the claims be found within a single prior art reference. Scripps Clinic & Research Foundation v. Genentech, Inc., 18 USPQ2d 1001 (Fed. Cir. 1991).

The test for obviousness under 35 U.S.C. § 103 is whether the claimed invention would have been obvious to those skilled in the art in light of the knowledge made available by the reference or references. In re Donovan, 184 USPQ 414, 420, n. 3 (CCPA 1975). It requires consideration of the entirety of the disclosures of the references. In re Rinehart, 189 USPQ 143, 146 (CCPA 1976). All limitations of the claims must be considered. In re Boe, 184 USPQ 38, 40 (CCPA 1974). In making a determination as to obviousness, the references must be read without benefit of applicants' teachings. In re Meng, 181 USPQ 94, 97 (CCPA 1974). In addition, the propriety of a Section 103 rejection is to be determined by whether the reference teachings appear to be sufficient for one of ordinary skill in the relevant art having the references before him to make the proposed substitution, combination, or other modifications. In re Lintner, 173 USPQ 560, 562 (CCPA 1972).

A basic mandate inherent in Section 103 is that a piecemeal reconstruction of prior art patents shall not be the basis for a holding of obviousness. It is impermissible within the framework of Section 103 to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the

full appreciation of what such reference fairly suggests to one of ordinary skill in the art. In re Kamm, 172 USPQ 298, 301-302 (CCPA 1972). Put somewhat differently, the fact that the inventions of the references and of the applicants may be directed to concepts for solving the same problem does not serve as a basis for arbitrarily choosing elements from references to attempt to fashion applicants' claimed invention. In re Donovan, 184 USPQ 414, 420 (CCPA 1975).

It is also clearly established in the case law that a change in the mode of operation of a device which renders that device inoperative for its stated utility as set forth in the cited reference renders the reference improper for use to support an obviousness-type rejection predicated on such a change. See, e.g. Diamond International Corp. v. Walterhoefer, 289 F.Supp. 550, 159 USPQ 452, 460-61 (D.Md. 1968); Ex parte Weber, 154 USPQ 491, 492 (Bd.App. 1967). In addition, any attempt to combine the teaching of one reference with that of another in such a manner as to render the invention of the first reference inoperative is not permissible. See, e.g., Ex parte Hartmann, 186 USPQ 366 (Bd.App. 1974); and Ex parte Sternau, 155 USPQ 733 (Bd.App. 1967).

In the case of In re Wright, 6 USPQ2d 1959 (Fed. Cir. 1988) (restricted on other grounds by In re Dillon, 16 USPQ2d 1897 (Fed. Cir. 1990), the CAFC decided that the Patent Office had improperly combined references which did not suggest the properties and results of the applicants' invention nor suggest the claimed combination as a solution to the problem which applicants' invention solved. The CAFC reached this conclusion after an analysis of the prior case law, at p. 1961:

"We repeat the mandate of 35 U.S.C. §103: it is the invention as a whole that must be considered in obviousness determinations. The invention as a whole embraces the structure, its properties, and the problem it solves. See, e.g., Cable Electric Products, Inc. v.

5 Genmark, Inc., 770 F.2d 1015, 1025, 226 USPQ 881, 886
(Fed. Cir. 1985) ("In evaluating obviousness, the
hypothetical person of ordinary skill in the pertinent
art is presumed to have the 'ability to select and
utilize knowledge from other arts reasonably pertinent to
[the] particular problem' to which the invention is
directed"), quoting In re Angle, 444 F.2d 1168, 1171-72,
170 USPQ 285, 287-88 (CCPA 1971); In re Antonie, 559 F.2d
10 618, 619, 195 USPQ 6, 8 (CCPA 1977) ("In delineating the
invention as a whole, we look not only at the claim in
question... but also to those properties of the subject
matter which are inherent in the subject matter and are
disclosed in the Specification") (emphasis in original).

15 The determination of whether a novel structure is or
is not "obvious" requires cognizance of the properties of
that structure and the problem which it solves, viewed in
light of the teachings of the prior art. See, e.g., In
re Rinehart, 531 F.2d 1048, 1054, 189 USPQ 143, 149 (CCPA
1976) (the particular problem facing the inventor must be
20 considered in determining obviousness); see also
Lindemann Maschinenfabrik GmbH v. American Hoist and
Derrick Co., 730 F.2d 1452, 1462, 221 USPQ 481, 488 (Fed.
Cir. 1984) (it is error to focus "solely on the product
created, rather than on the obviousness or notoriousness
25 of its creation") (quoting General Motors Corp. v. U.S.
Int'l Trade Comm'n, 687 F.2d 476, 483, 215 USPQ 484, 489
(CCPA 1982), cert. denied, 459 U.S. 1105 (1983)).

30 Thus the question is whether what the inventor did
would have been obvious to one of ordinary skill in the
art attempting to solve the problem upon which the
inventor was working. Rinehart, 531 F.2d at 1054, 189
USPQ at 149; see also In re Benno, 768 F.2d 1340, 1345,
226 USPQ 683, 687 (Fed. Cir. 1985) ("appellant's problem"
35 and the prior art present different problems requiring
different solutions").

A reference which teaches away from the applicants'
invention may not properly be used in framing a 35 U.S.C. §103
rejection of applicants' claims. See United States v. Adams,
148 USPQ 429 (1966).

40 Furthermore, functional language, preambles, and language
in "whereby," "thereby," and "adapted to" clauses cannot be
disregarded. Pac-Tec, Inc. v. Amerace Corp., 14 USPQ2d 1871
(Fed. Cir. 1990).

Objection to claims 1, 8, and 11
due to the term "hard link"

The term "hard link" is a very common term for UNIX type operating systems, referring to a file pointer. The Applicant
5 believes that the term "hard link" is clear to those skilled in the use of UNIX type operating systems, especially in view of the discussion on pages 11 and 12 of the specification. For example, the HP-UX operating system, described on page 12, lines 1-13, supports two types of file links, symbolic links
10 and hard links. Symbolic links are discussed on page 11, lines 20-25, and hard links are discussed on page 12. Both types of links are created using the "ln" UNIX command. (For more information, see the UNIX MAN pages for the ln command.) A
15 { symbolic link contains the file name and path of the target file, so if the target file is removed, the symbolic link refers to a non-existent file. A hard link, in contrast, is a pointer to a target file, pointing directly to the address space of the target file's data blocks. A hard link is generally indistinguishable from the target file. The
20 discussion on pages 11 and 12 make it clear that hard links, in contrast to symbolic links, are the preferred solution to prevent the need to copy a file which would result in duplicate files and time delays.

Therefore, the Applicant respectfully disagrees with the
25 Examiner that the term "hard link" is not clearly defined. However, claim 1, 8, and 11 have been amended to clarify that the hard links comprise file pointers. The meaning of hard link is unchanged, and no new matter has been added by the amendment.

Objection to claims 1-7 and 11
due to the preamble term "apparatus"

Claims 1-7 and 11 have been amended as suggested by the

Examiner to replace the term "apparatus" with "system."

Rejection of claims 3-4 under 35 U.S.C 101 and 112
for including both apparatus and method limitations

5 Claim 3 has been amended to remove the method limitations
and claim 4 has been canceled without prejudice or disclaimer.

Rejection of claims 4 and 10 under
35 U.S.C 112 over the phrase "7-bit safe"

10 Claim 10 has been amended to remove the phrase "7-bit
safe," and claim 4 has been canceled without prejudice or
disclaimer.

Rejection of claims 1-11 under 35 U.S.C 112
over the phrase "high speed" in the base claim preambles

Base claims 1, 8, and 11 have been amended to remove the
phrase "high speed" in the preambles.

15 Rejection of claims 1 and 11 under 35 U.S.C. 102(e)
as being anticipated by Cogger

The Invention of Claim 1

Claim 1 (as amended) is directed to:

20 "A system for facilitating the transfer of data to
authorized users over the Internet, the system
comprising:

a plurality of host machines for running a plurality
of processes, the plurality of host machines residing on
an unsecured side of a firewall, the firewall having a
25 secured side and the unsecured side;

at least one secure communication link between the

plurality of host machines;

a filing storage system accessible by at least one of the plurality of host machines, the filing storage system having a storeroom area and a customer account area, wherein the filing storage system supports hard file links between the storeroom area and the customer account area, the hard file links comprising pointers to files;

at least one secured host machine residing on the secured side of the firewall; and

a customer account database located on the secured host machine and accessible by at least one of the plurality of host machines across a second secure communication link through the firewall."

The underlined features of claim 1 above differentiate the present invention from Cogger. Cogger does not disclose a filing storage system having a storeroom area and a customer account area supporting hard file links between the two areas. Cogger also does not disclose a plurality of host machines on the unsecured side of a firewall with at least one secured host machine on the secured side of the firewall, wherein the secured host machine has a customer account database accessible by at least one of the plurality of host machines on the unsecured side of the firewall, and wherein at least one of the plurality of host machines can access the filing storage system. To anticipate a claim for a patent, a single prior source must contain all its essential elements.

Hybritech, Inc. v. Monoclonal Antibodies, Inc., supra.

In view of the above, claim 1 is believed allowable over Cogger.

The Invention of Claim 11

With regard to independent claim 11, the Applicant repeats the arguments for allowability stated for claim 1,

above, but specifically directed to the system set forth in claim 19. That is, the reference does not disclose or suggest:

5 "A system for facilitating the transfer of data to authorized users over the Internet, the system comprising:

a plurality of host machine means for running a plurality of processes;

at least one secure means for communicating between the host machines;

10 file storage means having a storeroom area and a customer account area with a means for securely hard linking between the areas, the hard linking comprising pointers to files;

15 firewall means for providing security between machines, with at least one secured host machine means residing on the secured side of the firewall;

means for databasing customer accounts located on the secured host machine means and accessible by a secured means for communicating through the firewall."

(Claim 11)

20 As discussed above with respect to claim 1, the underlined features differentiate the present invention from Cogger. Cogger does not disclose file storage means having a storeroom area and a customer account area with means for securely hard linking between the areas.

25 Rejection of claim 5 under 35 U.S.C. 103(a)
as being unpatentable over Cogger
in view of Applicant's background

Claim 5 has been canceled without prejudice or disclaimer.

Rejection of claims 7-8 under 35 U.S.C. 103(a)
as being unpatentable over Cogger

It is noted that in paragraph 16 of the Office Action, the Examiner stated that claims 7-8 were rejected under 35 U.S.C. 102(e). However, this is believed to be an error as this paragraph is in the 35 U.S.C. 103(a) section, and because the Examiner states that Cogger does not disclose a limitation of claims 7-8. Therefore, Applicant assumes that the rejection of claims 7-8 is based upon 35 U.S.C. 103(a).

Claim 7 is believed allowable as depending from an allowable base claim.

The Invention of Claim 11

With regard to independent claim 11, the Applicant repeats the arguments for allowability stated for claim 1, above, but specifically directed to the method set forth in claim 11. That is, the reference does not disclose or suggest:

"A method of facilitating the transfer of data to authorized users over the Internet, the method comprising:

(i) running a web server process on at least one host machine;

(ii) running an ftp server process on a separate host machine;

(iii) establishing a secure communication link between the host machines;

(iv) establishing at least one hard link between storeroom file storage areas and customer account file storage areas, the at least one hard link comprising a pointer to a file; and

(v) dynamically allocating customer access information from a secured database."

(Claim 11)

Cogger does not disclose or suggest establishing at least

one hard link between storeroom file storage areas and customer account file storage areas.

The Applicant believes that all the claims now pending in this patent application as described above are now allowable and that all other problems raised by the Examiner have been rectified. Therefore, the Applicant respectfully request the Examiner to reconsider his rejections and to grant an early allowance.



Respectfully submitted,

KLAAS, LAW, O'MEARA & MALKIN, P.C.

By: Guy K. Clinger
Guy K. Clinger
Registration No. 42,422
1999 Broadway, Suite 2225
Denver, CO 80202
(303) 298-9888

October 31, 2000